

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

74-1506

ORIGINAL

In The

United States Court of Appeals

For The Second Circuit

ROBERT FROSS STAPLIN,

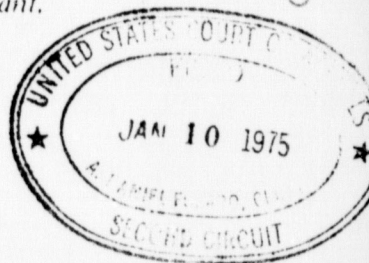
Plaintiff-Appellant,

- against -

MARITIME OVERSEAS CORP.,

Defendant-Appellee.

*On Appeal from the United States District Court for the
Southern District of New York*



APPELLANT'S APPENDIX

HENRY ISAACSON

Attorney for Plaintiff-Appellant

38 Park Row

New York, New York 10007

(212) 267-6557

HENRY ISAACSON
FRANCIS J. DOOLEY
*Of the New Jersey Bar
On the Brief*

(7935)

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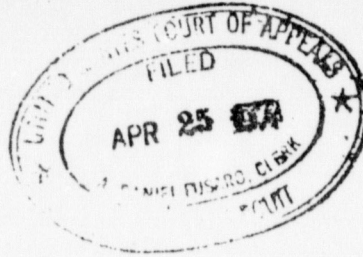
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RELEVANT DOCKET ENTRIES
(Filed April 25, 1974)

Jury demand date: 5 3 CIV 9 170

pleff by 7-6-73

CIVIL DOCKET
UNITED STATES DISTRICT COURT

a No. 106 Rev.

TITLE OF CASE

ROBERT FROSS STAPLIN

MARITIME OVERSEAS CORP.

ATTORNEYS

For plaintiff:

Henry Isaacson, Esq.
38 Park Row
N.Y.C. 10038
267-6557

For defendant:

Robert, Gardner, Poor & Associates
One State St. N.Y.C. 10001

STATISTICAL RECORD

J.S. 5 mailed

COPIES

Clerk

Shelton

Director

Manager

Inspector

DATE
1973

NAME OR
DESCRIPT NO.

R/C

ONLY COPY AVAILABLE

DATE	PROCEEDINGS	Date of Judgment
6-73	Filed complaint and issued summons.	
6-73	Filed Summons with Marshal's Return. Served Maritime Overseas Corp by Pay-Apparar, Claim Mar on 7/16/73.	
6-73	Filed Deft's Interrogs.	
6-73	Filed Deft's MD 222 to Complaint.	
6-73	Filed Deft's Notice of Examination before Trial ret. 6/29/73, 2:30 P.M.	
6/29/73	pre-trial before <i>Pollock, J.</i>	
6/31-73	Filed pltf's verified answers to interrogs. of deft.	
6/31-73	Filed interrogs. propounded to deft by pltf.	
6/31-73	Filed pltf's notice for discovery and inspection ret: 11-30-73.	
10/30/73	<i>Pre-trial before Pollock, J.</i>	
10/30/73	pre-trial before <i>Pollock, J.</i>	
11/17/73	<i>Pre-trial before Pollock, J.</i>	
11-29-74	filed pltf's affdvt in support of adjournment of the jury trial of this action.	
11-21-74	PRE-TRIAL CONFERENCE HELD BEFORE LEVET, J. Reassigned to Levett, J.	
11-21-74	Before Levett, J. Jury trial begun:	
11-25-74	Trial continued.	
11-26-74	" " & concluded. Jury verdict for & in favor of pltf. See, special verdict. Deft's motion to reduce the figure from \$2,400.00 to \$1,135.00 as the correct average figure for the period of time involved. Motion granted. Levett, J.	
11-25-74	Filed deposition of pltf. taken on 10-24-73. n/a	
11-25-74	Filed deft's supplemental requests to charge.	
11-25-74	Filed pltf's requests to charge.	
11-25-74	Filed deft's requests to charge.	
11-29-74	Filed Judgment 74,310 ordered that pltf. have judgment against, the deft. in the amount of \$2,335.00 with costs to be taxed. Levett, J. Judgment Ent. Clerk. m/a Ent. 4-1-74.	
11-29-74	Filed copy of costs on Judgment 74,310 in the sum of \$125.35.	
11-29-74	Filed deft's request to remit to the U.S.C.A. from final judgment, and on 3-20-74, filed copy to Haight, Gardner, Poor & Havens.	

DATE

PROCEEDINGS

(DUPLICATE SHEET, ORIGINAL MISSING) f

May 14-74 Filed notice that record on appeal has been certified & transmitted,
to the U.S.C.A. this 14th day of May, 1974.

Jun. 20-74 Filed notice that the supplemental record on appeal has been
certified & transmitted to the USCA this 20th day of June, 1974.

* * *

1 rgd 3 Staplin-direct

2 Q What voyage did you make on it at that time?

3 THE COURT: That's not relevant, counsellor.

4 A Coast-wise --

5 THE COURT: Wait a minute. Strike it out. That's
6 not relevant at this time. We are not trying damages.

7 Q Did there come a time in the course of your
8 employment aboard the Overseas Ulla that the vessel went to
9 Houston and loaded cargo?

10 A Yes, sir.

11 Q What cargo did it load?

12 A Grain.

13 Q What was the destination for that grain?

14 A Russia.

15 Q Do you recall the name of the port that you went
16 to in Russia?

17 A Odessa.

18 Q That's on the Black Sea?

19 A Yes, sir.

20 Q Did there come a time after the vessel discharged
21 its cargo in Odessa that it was to take on a load of
22 petroleum products in Russia?

23 A Yes, sir.

24 Q What were your duties after the vessel discharged
25 the grain as far as those tanks went?

* * *

* * *

THE WITNESS: My right hand was on the hand
rail.

THE COURT: And your left hand?

THE WITNESS: My left hand -- the ladder is too
big to --

THE COURT: No. Where was your left hand?

THE WITNESS: It was on my side.

THE COURT: Please answer the question. Don't
argue.

Go ahead.

Q You stated before that you twisted your right
ankle?

THE COURT: Yes, he said that.

Q On approximately what level was that?

THE COURT: Wait a minute, counsellor. I don't
want to hear testimony reviewed. It is not necessary.

Next question.

Q What step were you on on the ladder at that time?

A It was about the third or fourth step.

THE COURT: From the top?

THE WITNESS: From the top, yes, sir.

Q Would you describe to us what happened as you
slipped?

A Well, my ankle slipped and I went all the way

1 rgd 11

Staplin-direct

2 over. It was lucky I grabbed the other hand rail.

3 THE COURT: Never mind it. Disregard that state-
4 ment.

5 Don't throw in words that aren't necessary.

6 THE WITNESS: It's hard.

7 When I fell like that (indicating) it's hard to
8 tell you what I was doing.

9 THE COURT: Yes, but you didn't throw in about it
10 being lucky. Just answer the question.

11 THE WITNESS: Well, I caught the other rail.

12 THE COURT: All right. If you want to finish
13 it, finish it, if you can.

14 A I caught the other rail and I practically went
15 down.

16 THE COURT: Not what you practically did, what
17 you did.

18 THE WITNESS: I did.

19 THE COURT: We don't take guesses.

20 Q You are gesturing with your body and the steno-
21 grapher can't catch that.

22 I would like you to just put in your own words
23 what happened in relationship to every part of your body
24 when you slipped.

25 A Well, my leg twisted, my ankle twisted as I

* * *

rgd 44

Staplin-direct

* * *

A It went up in the Bronx and discharged. Bronx,
New York.

Q Did you stay with the vessel then or did you
get off?

A I got off.

Q When you got off, what was the reason for you
getting off the vessel?

A I got off to go to the Staten Island Marine
Hospital.

Q What was the condition of your foot on the trip
back?

A It was bothering me, aching.

Q Were you doing anything to treat it yourself?

A I just kept soaking my feet all the way back.

Q You said you got a master's certificate; is that
correct?

THE COURT: He didn't say that.

MR. DOOLEY: I'm sorry.

Q Did the vessel give you any authority to be
treated at the Public Health Service Hospital in Staten
Island?

A Yes.

Q What did they give you?

A A master's certificate.

* * *

1 rgd 46

Staplin-direct

* * *

2 Q How high did the cast go?

3 THE COURT: That doesn't tell how high the cast
4 was.

5 A It was a good inch over my ankle. It was a good
6 inch over the ankle. It covered the ankle.

7 Q Did they give you any duty status at the U. S.
8 Public Service Health Hospital?

9 THE COURT: When?

10 MR. DOOLEY: When he reported there.

11 A Yes. Yes, sir.

12 Q What duty status did they give you at that time?

13 A Unfit for duty.

14 Q What was that?

15 A Unfit for duty.

16 Q Not fit for duty?

17 A Yes.

18 Q Was the date that you reported to the Public
19 Health Service Hospital March 27, 1973?

20 A Right.

21 Q What complaints did you give them when you went
22 to the Public Health Service Hospital?

23 A I told them I twisted my knee and I think some-
24 thing is wrong in there.

25 THE COURT: You twisted your knee?

* * *

1 rgd 54

Staplin-direct

* * *

2 Q Did they take the cast off or did you take the
3 cast off?

4 A I took it off the night before I was supposed to
5 go back because my feet were smelling.

6 Q Were you able to ship out again after that?

7 A After I got fit for duty I was.

8 THE COURT: When did you return to work?

9 MR. DOOLEY: After May 30, 1973.

10 THE COURT: No, I was asking him a question.
11 You seem to bob up every time I ask a question. We can't
12 have more than one witness at a time, counsellor.

13 When did you return to work?

14 THE WITNESS: As soon as they gave me the fit
15 for duty.

16 THE COURT: No, when was it?

17 THE WITNESS: I don't remember.

18 THE COURT: All right, go ahead.

19 Q Were you pronounced fit for duty on May 30, 1973?

20 A May 30, yes.

21 Q Were you able to ship out after that?

22 A I registered to ship out. I was an AB man and--

23 Q When did you catch your next ship?

24 A I think it was a couple of months after that.

25 Q What type of assignment did you have on the

1 rgd 55

Staplin-direct

2 Overseas Ulla? Were you permanent or relief?

3 A Permanent.

4 Q What does that mean?

5 A I can stand there as long as I want.

6 Q Was there any period of time at which you would
7 have had to get off the vessel?

8 A No.

9 Q What were your wages on board the Overseas Ulla?

10 THE COURT: When?

11 MR. DOOLEY: When he was employed there as a
12 pump man.

13 THE COURT: You mean as of about whatever date
14 this accident occurred?

15 MR. DOOLEY: Yes, sir.

16 THE COURT: State that date again.

17 Q March 1, 1973.

18 THE COURT: What were your wages at that time?

19 Q What were your monthly wages at that time?

20 A They averaged around 1,500 a month.

21 MR. FLEMING: Objection, your Honor. The question
22 is wages, not income.

23 A Oh, the base pay?

24 Q What was your base pay?

25 A \$783 base pay.

1 rgd 56

Staplin-direct

2 Q Was there overtime --

3 THE COURT: Wait a second. Not so fast.

4 You're going along like a fire engine.

5 Do you mean that that was your monthly wage?

6 THE WITNESS: Yes, sir.

7 THE COURT: 7 what?

8 THE WITNESS: 783 something.

9 THE COURT: All right, go ahead.

10 Q In addition to your base wage, did you receive
11 overtime?

12 A Yes, sir.

13 Q Approximately how much overtime did you receive
14 a month?

15 A I can average as much as my base pay. I can
16 average 1,500 a month.

17 MR. FLEMING: Objection.

18 THE COURT: Sustained. Move to strike it out?

19 MR. FLEMING: I move to strike it out.

20 THE COURT: Strike it out. I can average.

21 Q I want to know how much you averaged in overtime
22 during the period you were employed on the Overseas Ulla.

23 MR. FLEMING: Objection again, your Honor. How
24 much did you earn in overtime.

25 THE COURT: Yes. Sustained as to form.

Q Including your overtime, how much money did you earn?

THE COURT: Get the overtime separately.

MR. DOOLEY: I am trying to get it, your Honor.

Q How much money did you earn per month in over-
time on the Overseas Ulla, averaging it out per month?

THE COURT: I don't know whether he has averaged it.

A \$700 per month.

Q So that in addition to the 780 some odd dollars you told us about --

THE COURT: You don't need to paint any lilies -- gild any lilies. He testified. You don't have to add it up for us.

MR. DOOLEY: No. I am just trying to --

THE COURT: I know. You are just trying to put a little flourish in, but you don't need it. It takes time.

Q How would you earn this overtime on board the vessel? What work would you do that would earn you overtime?

THE COURT: What work did he do?

MR. DOOLEY: Yes.

THE COURT: What work did you do?

THE WITNESS: Pumping cargo, ballast, repair work.

rgd 58

Staplin-direct

THE COURT: What repair work did you do?

THE WITNESS: I got to repair all that deck machinery, it's all mine.

THE COURT: What machinery?

THE WITNESS: The winches, deck machinery, cargo pumps.

THE COURT: That was all overtime?

THE WITNESS: Well, if it went after 5:00 o'clock, and a lot of pumps did.

THE COURT: Go ahead, counsellor.

Q Were there ever occasions when you had to work weekends on board the vessel?

A Yes, sir.

Q Did you work weekends then?

A Yes.

Q Was that overtime?

A Yes.

(Pause.)

THE COURT: All right, give it to the clerk to be marked for identification, counsellor, whatever it is.

(Plaintiff's Exhibit 2 was marked for
identification.)

THE COURT: What have you got? Can't you have the witness identify whatever it is?

xvx

1 rgd 59

Staplin-direct

2 MR. DOOLEY: Yes, your Honor. That's exactly
3 what I am going to do.

4 Q Mr. Staplin, this is the crew payroll from
5 January 19 to March 22, 1973, the period covering approxi-
6 mately two months and three days. I ask you if at line 24
7 of this document the initials "R. F. Staplin" refer to this
8 voyage of the Overseas Ulla -- if you are that R. F. Staplin?

9 A Yes.

10 Q It indicates you are chief pump man on board
11 that ship?

12 A Yes.

13 THE COURT: This is an unusual process, but I
14 have no objection.

15 MR. FLEMING: I thought this was already
16 admitted.

17 THE COURT: No, it isn't in evidence. This is
18 no way of proving a lawsuit, counsellor.

19 MR. DOOLEY: I will have it marked in evidence.
20 Do you have any objection to it going in in
21 evidence?

22 MR. FLEMING: I thought it was going in.

23 MR. DOOLEY: That was the distinct impression
24 I had.

25 THE COURT: Do something. Offer it if that's

1 rgd 60

Staplin-direct

2 what you want to do, instead of fiddling around.

3 Any objection?

4 MR. FLEMING: No objection.

5 THE COURT: Mark it in evidence.

6 (Plaintiff's Exhibit 2 was received in
7 evidence.)

8 Q Mr. Staplin --

9 THE COURT: Why do you have to ask him what it
10 is? Can't you read it?

11 MR. DOOLEY: I will read it.

12 THE COURT: That's what I suggest that you do.

13 MR. DOOLEY: referring to this document which
14 is the crew payroll from January 19 to March 22, 1973, for
15 the Overseas Ulla, at line 24, there is R. F. Staplin,
16 Social Security Number 053-12-7739, rating of chief pump
17 man, from January 19 to March 22, constituting a period of
18 two months and four days. His rate per month was \$783.73.
19 Wages earned, \$1,676.22.

20 THE COURT: One thousand what, sir?

21 MR. DOOLEY: \$1,676.22.

22 THE COURT: That's the total given?

23 MR. DOOLEY: Yes, sir. Then the next column
24 calls for overtime of \$449.56, and the total wages earned
25 were \$2,125.78.

* * *

1 rgd 63

Staplin-direct

* * *

2 THE COURT: How frequently was it?

3 Q Was it in the course of a voyage?

4 A A couple of times a week.

5 THE COURT: Some times some days you put the
6 arches in and some days you didn't?

7 THE WITNESS: Right.

8 Q Do you use the arch supports now?

9 A Now, no.

10 THE COURT: What did you say?

11 THE WITNESS: No.

12 MR. DOOLEY: He said no, your Honor.

13 Q Do you have any difficulties with the foot now?

14 A If I am on my feet a lot.

15 Q When you say a lot, what do you mean by that?

16 A Well, if I got to be up about 36 hours they

17 bother me.

18 THE COURT: If what?

19 THE WITNESS: If I got to be up a lot of hours,
20 36 hours, like that.21 THE COURT: You don't work 36 hours a day, you
22 can be sure of that.23 THE WITNESS: I do. You can check the records
24 of the chief and find out. I got that cargo to get out.

25 THE COURT: The pump man must be more than human

* * *

1 rpd 68

2 The plaintiff is entitled to be reimbursed
3 for any past loss of wages which he has sustained as a
4 result of his injuries. Any award for loss of earnings
5 must be based upon the amount of earnings the plaintiff
6 actually lost as a result of the accident.

7 In order to make any award for loss of past
8 earnings, you must determine whether or not the plaintiff
9 has proved by a fair preponderance of the credible evidence,
10 one, that he was physically unable to work for any portion
11 of the period which I mentioned, that is the period from
12 March 27 to May 30, and secondly, he must establish, by like
13 proof, that such disability to work was proximately caused
14 as a result of the accident of March 1, 1973.

15 The measure of lost wages, if and when you
16 have determined the period for which he was unable to work
17 because of the effects of the accident, must be based upon
18 what you believe he would have earned in that period under
19 the same conditions that is, assuming that cargo was being
20 carried at the same rate and volume, and so forth, at the
21 time of the period of loss. No award for lost earnings may
22 be based on conjecture. Rather, within the framework of
23 what has been shown by a fair preponderance of the credible
24 evidence, you must determine whatever lost earnings the
25 plaintiff has proved.

Now a word about the claim for past pain,

1 rgd 69

2 suffering and disability. With respect to this claim, the
3 plaintiff, upon satisfactory proof, is entitled to recover
4 a sum which will justly and fairly compensate him for his
5 injuries and for any conscious pain, suffering and disability.
6 This you may consider and award the plaintiff the sum which
7 will compensate for any such past pain, suffering and
8 disability, which is shown to be proximately caused by the
9 accident.

10 You'll recall that I stated that you may con-
11 sider the testimony of the plaintiff, and I stated what I
12 believe was the only testimony with reference to the lost
13 wages and possibly something about the past pain and whether
14 or not there was anything stated by Dr. Berman as to his
15 opinion as to past pain and suffering.

16 Keep in mind that any such damages with respect
17 to pain, suffering and disability are purely compensatory.
18 They must in no way reflect any punitive or penalty against
19 the defendant.

20 You must also consider in this field the fact,
21 if it has some effect on the situation, of a previous
22 accident prior to this accident to the same ankle and
23 transpiring, I believe, in the year 1970, if I'm not mistaken.
24 Of course, the plaintiff is not entitled to recover for
25 any injuries from which he suffered in the past which were

★ ★ ★

1 rgd 72

2 marine hospital in the United States in Staten Island with
3 a master's certificate. At the hospital, as an out-patient,
4 being there merely for the day, a wet cast was put on his
5 ankle and he was marked not fit for duty. He said that he
6 had twisted his ankle; that he still had pain and throbbing.

7 On March 27, about three weeks later, he again
8 went to this public hospital as an out-patient. He gave
9 his weight, which you heard, and again on May 2, 1973, he
10 was marked not fit for duty.

11 On May 29 he testified that he himself took off
12 the cast on the ankle and that he returned to the public
13 hospital on May 30 and he was ready and willing and able, he
14 believed, to work and was marked fit for duty.

15 You heard the stipulation with respect to the
16 earnings. He said that he wore arches from time to time
17 some time ago, but not any longer.

18 I believe he testified that the other accident
19 involving the same ankle was in February 1971. There was
20 some testimony about his being examined by the physician and
21 a record of that is in evidence, which you may examine if
22 you wish.

23 Dr. Michael Berman, orthopedic and traumatic
24 surgeon, testified that he examined the patient on June 6,
25 1973. This was the only examination he made. He described

1 rgd 79

2 things. You have heard stated the stipulation as to the
3 actual wages earned in the years 1969 through '72 which
4 makes up four years. You may consider the average. I
5 think that's a fair way to approach it, the average earnings
6 for those four years. If you don't remember what they are,
7 you may ask me to read from my charge what they were, and
8 if you wish, the foreman may write it down.

9 You may also consider, for whatever aid it may
10 be, the exhibit 2 which contains under the name of the
11 plaintiff certain information.

12 That's all, gentlemen.

13 JUROR NO. 6: Can we have the wages?

14 THE COURT: Ladies and gentlemen, you may retire.

15 THE CLERK: They are looking for the figures.

16 THE FOREMAN: Yes.

17 THE COURT: Well, Mr. Foreman, suppose you write
18 them down. I will read them off just as they are stipulated.

19 1969, \$8,732; 1970, \$8,147; 1971, \$1,671;
20 1972, \$6,107.

21 Now you may retire.

22 (Jury retires to deliberate on a verdict at
23 11:50 a.m.)

24 (At 12:56 p.m. the jury returned to the court-
25 room.)

1 rgd 81

* * *

2 THE COURT: I am sorry, two months is correct.
3 I am sorry, I misspoke. It is only two months. It is
4 from the dates I stated, the 27th of March to the 30th day
5 of May, which means you have a few days in March and you
6 have April and May. Two months. I'm sorry, I misspoke.

7 Very well, you are going to go to lunch now.

8 (The jury took their luncheon recess.)

9 (At 2:15 p.m. the jury resumed their deliber-
10 ations.)

11 (At 2:55 p.m the jury returned to the court-
12 room.)

13 (Jury roll called -- all present.)

14 THE COURT: Have the jurors agreed upon a
15 verdict?

16 THE FOREMAN: Yes.

17 THE CLERK: How do you find to question 1A?

18 THE FOREMAN: Yes.

19 THE CLERK: How do you find to question 1B?

20 THE FOREMAN: Yes.

21 THE COURT: Yes?

22 THE CLERK: 1B.

23 THE FOREMAN: \$2,400.

24 THE CLERK: \$2,400?

25 THE FOREMAN: Yes.

1 rgd 82

2 THE CLERK: Mr. Foreman, how do you find to
3 question 2A?

4 THE FOREMAN: Yes.

5 THE CLERK: How do you find to question 2B?

6 THE FOREMAN: \$1,200.

7 THE CLERK: \$1,200.

8 Mr. Foreman, how do you find to question 3?

9 THE FOREMAN: \$3,600 all together.

10 THE CLERK: Ladies and gentlemen of the jury,
11 listen to your verdict as it stands recorded. You say you
12 find to question 1A, yes; to question 1B, \$2,400; to
13 question 2A, yes; to question 2B, \$1,200; to question number
14 3, \$3,600, and so say you all.

15 THE COURT: Poll the jury, please.

B12 16 THE CLERK: Ladies and gentlemen of the jury,
17 listen to your verdict as it stands recorded. You say you
18 find to question 1A, yes; to question 1B, \$2,400; to
19 question 2A, yes; to question 2B, \$1,200; to question number
20 3, \$3,600?

21 (Each juror, upon being asked by the clerk,
22 "Is that your verdict", answered in the affirmative.)

23 THE CLERK: The jury is polled, your Honor.

24 THE COURT: Very well. Will you get the
25 special verdict and hand it to me.

1 rgd 83

2 This seems to be signed by all six jurors and
3 the amounts and so forth, the answers to the questions seem
4 to be asserted orally.

5 Now, this ends your service here in this case.

6 What are the instructions?

7 THE CLERK: The jurors are discharged. I have
8 their certificates of discharge here.

9 THE COURT: All right, that ends your period of
10 service.

11 Counsel remain a few minutes.

12 THE CLERK: You may go now. Thank you.

13 (Jury excused.)

14 THE COURT: Mr. Fleming, have you compute^d the
15 average --

16 MR. FLEMING: Yes, your Honor.

17 THE COURT: Of the four years?

18 MR. FLEMING: Yes, your Honor. The figures that
19 we have are \$6,200 per year.

20 THE COURT: That's the average?

21 MR. FLEMING: Yes, your Honor, for the four
22 years 1969, 1970, 1971 and 1972.

23 THE COURT: What would two months and six days
24 be computed on that basis?

25 MR. FLEMING: It would be --

1 rgd 84

2 THE COURT: It certainly wouldn't be \$2,400.

3 MR. FLEMING: I would say, your Honor, it is not
4 \$2,400. At the outside, 1,200.

5 THE COURT: Let me compute it. We will divide
6 \$6,200, that's the average, by 12 to get one month. That's
7 about \$516, times two months would be \$1,032. 1,032. You
8 had one-fifth of the month, and that would be one-fifth of
9 \$516, and that would be \$103, which would make a total of
10 \$1,233.

11 You may move to reduce this.

12 MR. FLEMING: Your Honor, I would make it
13 \$1,135.

14 THE COURT: Yes. \$1,133, isn't it?

15 MR. FLEMING: Yes, sir, approximately.

16 THE COURT: All right, you move to reduce the
17 verdict?

18 MR. FLEMING: Yes, sir. In view of the evidence
19 presented on this trial, I move that the plaintiff's
20 earnings for the past four years averaged at \$6,200 per
21 year, and that the proof on this trial, indeed the claim
22 itself is limited to two months and five days and that so
23 much of the verdict as contained in 1B be reduced from
24 \$2,400 to \$1,135.

25 THE COURT: \$1,135?

1
2 MR. FLEMING: Yes, your Honor.

3 THE COURT: That, added to the \$1,200, would
4 make it a total of?

5 MR. FLEMING: I believe it is \$2,335, your Honor.

6 THE COURT: Yes, \$2,335.

7 Any objection, counsel?

8 MR. DOOLEY: Yes, I do object, your Honor.

9 THE COURT: What's the objection?

10 MR. DOOLEY: The objection is that we have had
11 a jury finding which cannot be disturbed. It is a finding
12 of fact and the fact has been transmitted into figures.
13 Any instructions to the jury on the mathematical calculations
14 are at best guidelines and also submitted to them with the
15 fact what were the man's past earnings records for the
16 previous two months. In fact, it was almost the same period
17 now. So they could very well use that as a guide in calcu-
18 lating the wages that were lost by the man had he stayed
19 aboard the vessel.

20 The testimony of the plaintiff was that he left
21 the vessel to seek medical care. Had he stayed that equiva-
22 lent period of time aboard the vessel he would have earned
23 almost exactly the figure that is being deducted from it,
24 or the figure -- the \$2,400 figure.

25 THE COURT: I don't quite understand your point.

1 rgd 86

2 MR. DOOLEY: His earnings were approximately
3 \$1,100 plus per month calculating the voyage as a grain-
4 carrying tanker, which reduced his earning capacity as a
5 pump man aboard the vessel.

6 THE COURT: I never yet have followed you on
7 this score.

8 MR. DOOLEY: Well, a pump man is an individual
9 member of the crew who handles liquid cargo. When there is
10 no liquid cargo his earnings are consequently reduced. The
11 earning period that was submitted to the jury for this one
12 particular voyage was two months and some-odd days, from the
13 middle of January to the end of March.

14 THE COURT: Six days.

15 MR. DOOLEY: It would approximate 21, 22, 2,300
16 dollars. I'm not quite sure what it is.

17 There was testimony from the individual
18 plaintiff that if he had --

19 THE COURT: What's the basis of your last
20 statement?

21 MR. DOOLEY: The earning record that was sub-
22 mitted in evidence. I believe that's P-2. That was the
23 payroll sheet from the voyage, and it indicated for two
24 months and a few days he made in excess of \$2,100 working
25 as a pump man on board that vessel.

1 rgd 87

2 He was a permanent employee of the vessel and
3 he left the vessel with a master's certificate. He wasn't
4 discharged for cause. He left the vessel with a master's
5 certificate to seek medical attention from the United States
6 Public Health Service. Presumably if he had stayed in the
7 employ of the vessel for that -- up until May 30, 1970, he
8 would have made approximately the \$2,400 that the jury
9 arrived at because the question was asked of your Honor,
10 you may recall, when the jury convened on that one particular
11 issue of wages, whether he was paid lost wages for the
12 period that he was not fit for duty. That was the specific
13 inquiry from the jury. The answer was agreed to by counsel
14 and myself --

15 THE COURT: That was for two months and six
16 days.

17 MR. DOOLEY: Yes, sir. The answer was he was
18 not paid those wages.

19 THE COURT: I don't follow you at all. You say
20 if he was paid so much between a certain period before this,
21 that, therefore, after this he would be paid the same amount.

22 MR. DOOLEY: Approximately, yes, your Honor.

23 THE COURT: What do you say to that, Mr. Fleming?

24 MR. FLEMING: Your Honor, as a matter of fact,
25 the articles terminated. He got off this vessel. There is

1 rgd 88

2 no proof that he would have stayed on this vessel.

3 THE COURT: When did he get off the vessel?

4 MR. FLEMING: He got off the vessel March 22,
5 1973. There is no proof that he would have been allowed to
6 come back on. He says that he was a permanent employee,
7 but there is no such thing as far as the Coast Guard is
8 concerned. He would have had to sign --

9 THE COURT: There is no proof, then, that after
10 he got off that he would have been rehired anyway.

11 Motion granted.

12 MR. DOOLEY: May I be heard on that particular
13 aspect?

14 THE COURT: No. I let you speak. I don't know
15 how long you expect to play ping-pong here. You argued and
16 you stopped and I asked counsel to reply, but I will let
17 you say whatever you want to say.

18 MR. DOOLEY: Your Honor, Mr. Fleming knows that
19 this vessel is subject --

20 THE COURT: Don't tell me what Mr. Fleming knows.
21 I don't know what he knows.

22 MR. DOOLEY: This vessel is subject to an
23 employment contract with the Seafarer's International Union.
24 There is a distinct procedure to be followed --

25 THE COURT: There is no proof as to what the

1 rgd 89

2 contract was, counsellor.

3 MR. DOOLEY: But there is no proof that the man
4 was to have been discharged.

5 THE COURT: There was no proof the other way
6 that he wasn't to be discharged.

7 MR. DOOLEY: Yes, there was. There was
8 evidence elicited from the plaintiff on the stand as to how
9 he got to the marine hospital. He said, "I applied to the
10 Master for a master's certificate. It was given to me and
11 I went to the marine hospital."

12 THE COURT: That doesn't show that his contract
13 was renewed.

14 MR. DOOLEY: Your Honor, there is no contract
15 on board these voyages. The man is hired from the
16 Seafarer's International Union and he stays there.

17 THE COURT: Are you testifying or are you
18 referring to the evidence?

19 MR. DOOLEY: I may be doing both at that point.

20 THE COURT: You are not going to testify,
21 counsellor.

22 MR. DOOLEY: Well, then, I am referring to the
23 evidence. There has been absolutely no evidence that this
24 man's employment was being terminated with the company when
25 he left the vessel with a master's certificate.

1 rgd 90

2 THE COURT: There wasn't any proof that it would
3 go on. You have to prove your damages, or your plaintiff's
4 damages.

5 Motion still granted.

6 That means that the clerk will be directed to
7 enter judgment in the amount of \$1,200 plus -- what is it,
8 \$1,135?

9 MR. FLEMING: Yes, sir.

10 THE COURT: \$1,135, or \$2,335, together with
11 the costs.

12 The case is ended. We are adjourned to
13 tomorrow morning.

14 * * * * *

U.S. DIST. COURT
S. D. OF N. Y.

LIA"

VOYAGE No.
WE, THE UN2-~~id~~See Sec. No.
Don't Pay Without
No. or SS-
Application

Rating

Period (Inclusive)

Tim

From To Mos.
1973 1973

2

3

4

5

6

		113-20-7482	MASTER	1-19	3-22	2
2	J. L. HANFLY	154-18-0433	CH. MATE	1-19	3-22	2
3	S.W. GORDON	122-24-3260	2nd Mate	1-19	3-22	2
4	CIS: CHILDERS	113-05-4698	3rd Mate	1-23	3-22	2
5	A. P. PETERSON	507-54-6318	3rd Mate	1-23	3-22	2
6	H.J. CRAMER	160-14-4617	R.E.O.	1-19	3-22	2
7	J.E. BUSALACKI	489-22-0605	BOSUN	1-19	3-22	2
8	D. DI SEI	205-07-8438	DK. MAINT	1-19	3-22	2
9	M. WEICH	254-30-7019	DK. MAINT	1-19	3-22	2
10	T.J. SCHNELL	369-38-9793	A.B.	1-19	3-22	2
11	J.P. LEWIS	558-26-3719	A.B.	1-19	3-22	2
12	R.E. HOWARD	248-70-2129	A.B.	1-19	3-22	2
13	D. HEBIOR	357-32-0629	A.B.	1-19	3-22	2
14	C.H. ALLEN	081-18-7589	A.B.	1-19	3-22	2
15	L. REINCHUCK	081-22-3719	A.B.	1-19	3-22	2
16	F. TOKARCHUK	138-10-3252	O.S.	1-19	3-22	2
17	C.A. EASTLAND	470-54-3242	O.S.	1-19	3-22	2
18	F. J. KAYE, JR.	454-02-6323	O.S.	1-19	3-22	2
19	H.A. ROWSE	252-10-2615	CH. ENG.	1-19	3-22	2
20	D.R. JOHNSON	476-26-4347	1st Asst.	1-18	3-22	2
21	H.A. CRADY	426-34-6631	2nd Asst.	1-19	3-22	2
22	C.G. HENIST	083-24-3237	3rd Asst.	1-19	3-22	2
23	J.E. YACUIS	025-01-9809	3rd Asst.	1-22	3-22	2
24	D.F. CRAMER	053-12-7739	CH. PUP	1-19	3-22	2
25	G.W. CRASS	174-24-5526	CH. PUP	1-19	3-22	2

IT P2 - PAYROLL RECORD 31a
OVERSEAS CORPORATION, Agents

129-129A CREW PAYROLL FROM, JANUARY 19, 1973,

UNDERSIGNED, severally acknowledge that we have received the sums set opposite our respective names, in

Days	Rate Per Month	Wages Earned	Area Bonus Footnote Supporting Dates Below	Overtime (Per time sheets attached)	Extras (A)	Extras (B)	Total Wages Earned (Add 10, 11, 12)	S.S. and I Board and Lod	1
7	8	9	10	11	12	12	13	14	15
4	2511 39	5357 63		260 00			5617 63	63	1 10
4	1587 83	3387 37		335 41			725 78	63	1 60 10
4	1096 94	2340 14		2236 18			4570 32	63	1 60 10
0	953 40	1906 80		1523 69			3500 49	53	1 60 19
0	953 40	1906 80		1559 22			3460 02	59	1 60 9
4	1357 06	2894 98		2039 48	117 72		5102 18	63	1 60 10
4	778 61	1661 03		2231 94			3942 97	63	1 20 7
4	639 06	1363 33		1312 22			3245 55	63	1 20 7
4	639 06	1363 33		1738 66			3151 99	63	1 20 7
4	562 40	1129 79		1608 22			3008 01	63	1 20 7
4	562 40	1129 79		1409 77			2609 56	63	1 20 7
4	562 40	1129 79		1057 63			2257 42	63	1 20 7
4	562 40	1129 79		1696 05			2095 04	63	1 20 7
4	562 40	1129 79		1421 18			2640 97	63	1 20 7
4	562 40	1129 79		1216 42			2416 21	63	1 20 7
4	455 96	951 38		717 02			1538 40	63	1 20 7
4	445 96	951 38		1135 94			2137 32	63	1 20 7
4	445 96	951 38		1100 38			2051 76	63	1 20 7
4	2442 78	5211 26					5211 26	63	1 60 10
5	1633 12	3646 76		2278 00			5924 76	64	1 60 10
4	1162 76	2480 55		2712 08			5192 63	63	1 60 10
4	1010 60	2155 95		2474 10			4630 05	63	1 60 10
1	1010 60	2054 83		1647 08			3701 97	60	1 60 9
4	785 73	1676 22		149 56			2125 73	63	1 20 7
4	785 73	1676 22		135 84			2111 46	63	1 20 7

TO MARCH 22, 1973, ARTICLES DATED AT HOUSTON
 full payment for our services, for the period indicated below at NEW YORK, N.Y.

Income Tax Data				DEDUCTIONS					
Eng	Am't Taxable	No.	Soc. Sec.	INCOME TAX	Allocments	Stop	Advances	Fines	Others
ment	Add. Cons. 13, 16	Dep.	Tax	Withholding & NRA TAX (4)		Account			
	17	18	19	20	21	22	23	24	25
2 40	5720 03 0(M)		334 63	1442 12	3200 00				
2 40	7355 18 0(M)		430 28	2030 77	1600 00	74 66	133 00		
2 40	4678 72 4(M)		273 71	878 85	1600 00	51 91	213 40		
5000	3596 49 2(M)		210 38	660 80	400 00	25 89	600 00		
5 00	3562 02 1(S)		208 39	808 30		19 65	28 31		
2 40	5204 58 2(M)		304 48	1140 30	600 00	17 11	113 40		
5 80	4019 77 1(M)		235 16	800 00	800 00	14 72			
5 80	3322 35 0(S)		194 35	756 00	1000 00	37 15	13 40		
5 80	3228 79 0(M)		188 88	620 55	800 00	6 00	100 00		
5 80	3094 81 0(S)		180 46	667 80	400 00	22 27	363 40		
5 80	2686 36 0(S)		157 15	548 10	800 00	27 11	100 00		
5 80	2334 22 0(S)		136 55	437 85	400 00	75 75	370 00		
5 80	2972 64 0(S)		173 91	626 85					
5 80	2717 77 0(M)		158 99	472 50	800 00	50 76	450 00		
5 80	2493 01 0(S)		145 86	491 40	600 00	63 96	463 40		
5 80	1745 20 0(S)		102 10	305 55	400 00	39 85		59 48	
5 80	2214 12 0(S)		129 53	406 35	660 00	49 94	253 31		
5 80	2128 56 1(S)		124 53	359 10		40 30	180 90		
2 40	5313 66 3(M)		310 85	1154 07	2000 00	10 50	121 50		
1 60	6028 35 0(S)		352 65	1612 85	2000 00	43 60	326 80		
2 40	5295 03 2(S)		309 77	1180 21	1400 00	27 45	6 70		
2 40	4732 45 9(M)		276 84	699 30	1200 00	56 45	600 00		
1 60	3799 57 3(S)		222 29	801 00	1200 00	16 59	63 40		
5 80	2202 58 2(M)		128 86	280 00	1000 00	33 95			
1 00	2183 21 0(M)		128 01	160 00	2000 00	50 00	650 00		

ORIG.
DUPL.
TRIP.

TO MARITIME OVERSEAS CORPORATION

QUAD. TO-SHIP'S FILE

ON, THOMAS

on JANUARY 19,

19 73

on MARCH

19 73

Total Deductions (Add 19-25)	Sub Balance (Col. 22 minus 25)	Cash Subsistence (Insert Detail below Line 5)	Balance Due (Complete)	SIGNATURE I hereby acknowledge receipt of the "Balance Due" as shown on this payroll and certify said balance is correct
26	27	28	29	30
4976 75		4976 75	640 88	1 <i>P. Palmadani</i>
4268 71			2984 07	2 <i>P. P. P.</i>
3017 87			1558 45	3 <i>P. P. P.</i>
1897 07			1603 42	4 <i>P. P. P.</i>
1064 65			2401 37	5 <i>P. P. P.</i>
2175 29			2926 89	6 <i>P. P. P.</i>
1849 88			2093 09	7 <i>George E. Fung</i>
2000 90			1244 65	8 <i>P. P. P.</i>
1715 43			1435 56	9 <i>W. W. W.</i>
1633 93			1374 08	10 <i>Thomas J. Schell</i>
1632 35			977 20	11 <i>P. P. P.</i>
1420 15			837 27	12 <i>P. P. P.</i>
800 76			2095 08	13 <i>Conrad H. H.</i>
1932 27			708 70	14 <i>Charles H. Allen</i>
1764 62			651 59	15 <i>L. R. R.</i>
906 98			761 42	16 <i>Francis J. J.</i>
1499 13			638 19	17 <i>P. P. P.</i>
704 83			1346 93	18 <i>Frank R. R.</i>
3596 92			1614 34	19 <i>W. A. A.</i>
4335 90			1588 85	20 <i>W. R. R.</i>
2924 13			2268 50	21 <i>P. P. P.</i>
2832 59			1797 45	22 <i>P. P. P.</i>
2303 23			1398 69	23 <i>P. P. P.</i>
1452 61			673 17	24 <i>P. P. P.</i>
				25 <i>P. P. P.</i>

U S COURT OF APPEALS: SECOND D CIRCUIT

STAPLIN,

Plaintiff-Appellant,

- against -

MARITIME OVERSEAS CORP.,

Defendant-Appellee.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF

ss.:

I, James Steele, being duly sworn,
depose and say that deponent is not a party to the action, is over 18 years of age and resides at
250 West 146th, Street, New York, New York

That on the 10th day of January 1975 at 1 State St. Plaza, New York

deponent served the annexed Appendix upon

Haight, Gardner, Poors & Havens

the in this action by delivering a true copy thereof to said individual
personally. Deponent knew the person so served to be the person mentioned and described in said
papers as the Attorney(s) herein.

Sworn to before me, this 10th
day of January 1975

Robert T. Brin

James Steele
JAMES STEELE

ROBERT T. BRIN
NOTARY PUBLIC, STATE OF NEW YORK
NO. 31 - 0418950
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES MARCH 30, 1976